

fact sheet

employment standards act

ROLE OF THE MINISTRY OF LABOUR

What is the purpose of the *Employment Standards Act, 2000 (ESA)*?

The *ESA* sets out rights of employees and requirements that apply to employers in most Ontario workplaces.

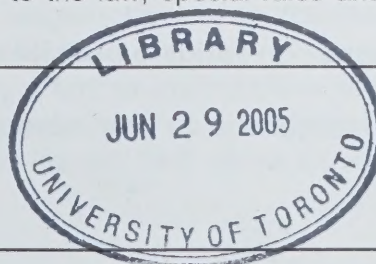
What work is not covered by the *ESA*?

Most employees and employers in Ontario are covered by the *ESA*. However, the *ESA* does **not** apply to certain individuals and persons or organizations for whom they may perform work, including:

- Employees in sectors that fall under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways
- Individuals performing work in a program approved by a college of applied arts and technology or university
- A secondary school student who performs work under a work experience program approved by the school board that operates the school in which the student is enrolled
- People who do community participation under the *Ontario Works Act, 1997*
- Police officers (except for the Lie Detectors part of the *ESA*, which *does* apply)
- Inmates taking part in work or rehabilitation programs, or young offenders who perform work as part of a sentence or order of a court
- People who hold political, judicial, religious or elected trade union offices.

Employees of the Crown are excluded from some (but not all) provisions of the *ESA*.

For a complete listing of other job categories not governed by the *ESA*, please check the *ESA* and its regulations. Regulations set out exemptions to the law, special rules and details about how to apply certain sections of the *ESA*.



What is the Ministry of Labour's role in relation to the *ESA*?

The Ministry of Labour administers the *ESA* and regulations, which set out rights of employees and requirements that apply to employers in most Ontario workplaces.

Specifically, the Ministry of Labour, through its Employment Standards Program:

- provides information and education to employers and employees, making it easier for people to understand and voluntarily comply with the *ESA* and its regulations
- investigates possible violations of the *ESA* and its regulations
- resolves complaints
- enforces the *ESA* and its regulations
- conducts proactive inspections of payroll records and workplace practices to ensure the *ESA* is being followed.

What does the Ministry of Labour do to make it easier for employees and employers to follow the *ESA*?

To help employees and employers understand their rights and obligations, which enables them to follow the *ESA* voluntarily, the Ministry of Labour helps in a number of ways.

The ministry provides a wide range of published materials and services, including:

- free and "at-cost" publications
- a toll-free call centre
- an extensive Internet website
- local ministry offices across the province
- government information centres.

The ministry also has staff in the Employment Standards Program who:

- hold educational seminars and workshops for groups of employers, employees and professional associations.

To access Ministry of Labour publications and services related to the *ESA*, see *Need More Information?* at the end of this Fact Sheet.

How does the Ministry of Labour investigate possible violations of the *ESA*?

The ministry conducts investigations to see whether the *ESA* and its regulations are being followed.

Investigations are usually started in response to a complaint, on an approved form, from an employee, a former employee or a group of employees. (See *How does the Ministry of Labour help employees to resolve complaints?* in this Fact Sheet.)

With two exceptions an employee must file a written claim with the Ministry of Labour within six months of the date wages became due in order to recover them.

The first exception to this rule deals with vacation pay. Unpaid vacation pay may be recovered if the claim is filed within 12 months of the date the vacation pay came due (rather than 6 months).

The second exception is where an employment standards officer finds that an employer has violated the same section of the *ESA* more than once and at least one of the violations occurred in the six-month period before the claim was filed. In these circumstances, the employee will be entitled to recover the wages due for all violations of the same provision that occurred in the 12-month period before the claim was filed.

The six-month/one-year limitation on recovery only applies to an employee's ability to seek recovery of unpaid wages, including vacation pay. In circumstances where compensation and/or reinstatement can be ordered, an employee can file a claim up to two years after the date on which the employer violated the *ESA*. (See the "How to File a Claim" Fact Sheet, or *Your Guide to the Employment Standards Act* for more details on time limits and situations to which they apply.)

The ministry also conducts inspections on its own initiative. (See *How do the ministry's proactive inspections ensure that employees and employers follow the ESA?* in this Fact Sheet.)

What is the ministry's role for employees who belong to trade unions?

Generally speaking, employees represented by a union can't file a claim. These employees—if they are covered by a collective agreement and whether or not they are actually *members* of the union—must use the grievance procedure contained in the collective agreement between the employer and the trade union.

How does the Ministry of Labour help employees to resolve complaints?

Staff from the Ministry of Labour's Employment Standards Program handle complaints and decide whether there has been a violation of the law. The following summarizes the main steps in the process:

- An employee who has a complaint that his or her employer is not following the *ESA* can phone the call centre or visit the nearest Ministry of Labour district office to discuss a particular situation or to file a claim. Complaints are investigated by an employment standards officer who can, if necessary, make orders against an employer—including an order to comply with the *ESA*—or issue notices of contravention.
- When an employee files a claim, a formal investigation isn't usually started immediately. Instead, ministry staff may encourage the employee to resolve problems directly with the employer. They help the employee identify and define issues, and suggest ways to resolve them.

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- If there's no resolution, ministry staff inform the employer that the claim has been filed, and encourage the employer to resolve the matter.
 - If the issue still can't be settled, the file is assigned to an employment standards officer for a full investigation.
 - The employment standards officer conducts investigations by telephone, through written correspondence, by visiting the employer's premises or by requiring the employee and/or the employer to attend a fact-finding meeting. During an investigation, both parties have the opportunity to present the facts and arguments they believe are relevant to their case.

See the "How to File a Claim" Fact Sheet for more information on fact-finding meetings.

How do the ministry's proactive inspections ensure that employees and employers follow the ESA?

Employment standards officers also conduct proactive inspections of payroll and other records, including a review of employment practices. An officer conducting a proactive inspection will usually visit the employer's premises. Officers may notify the employer in writing before the inspection—but aren't required to. A notice may include a list of records and other documents the employer must provide at the inspection. The employer is required to produce the records requested, and must answer questions that the officer feels may be relevant.

An officer is permitted to take away records or other information for review and copying. The employer is welcome to ask questions, and to request further information.

An employment standards officer can also require the employer to attend a fact-finding meeting if, during the inspection, he or she believes the *ESA* has been contravened.

See the "How to File a Claim" Fact Sheet for further details on proactive investigations and fact-finding meetings.

What happens when an employment standards officer makes a decision?

After investigating a claim, the employment standards officer makes a decision about whether the employer has complied with the *ESA*, or not.

If the officer finds that the employer *has* complied with the *ESA*:

- In cases where an employee has filed a claim with the Ministry of Labour, the employee is notified in writing of this decision, and can apply for a review within 30 days. (See *Does the ministry conduct reviews (appeals) of the decisions of its employment standards officers?* in this Fact Sheet.)

If the officer finds that the employer *hasn't* complied with the *ESA*:

- The employer may resolve the issue by voluntarily complying with the officer's decision (i.e., by paying money that's owing to an employee or employees, by changing workplace practices or adopting new workplace practices).

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- Officers can also require an employer to post a notice containing specific information about administration or enforcement of the *ESA*, and/or a copy of portions of the report with the results of the officer's investigation or inspection.

What is the ministry's role if an employer doesn't comply with an officer's decision?

If an employer is unwilling or unable to comply with an employment standards officer's decision, the officer can issue one or more of the following:

- an Order to Pay Wages (the employer must pay wages owed plus an administrative fee)
- a Compliance Order (the employer must take or stop certain actions so it is no longer violating the law)
- a Notice of Contravention (the employer must pay prescribed penalties for violating a section of the *ESA*)
- an Order to Pay Compensation and/or Reinstate (for violations of rights related to emergency leave, family medical leave, parental and pregnancy leave, lie detectors, the right not to be penalized for exercising rights under the *ESA*, for example).

Employers have the right to apply for a review (i.e., appeal, see below). If an employer doesn't apply for a review within 30 days of the date an order or notice was served, the order or notice is final and binding on the employer. Where the employer has not paid the required amount, the file is sent to a private collection agency. The employer is required to pay the collection agency fees as well as the ministry's administrative fees.

Does the ministry conduct reviews (appeals) of the decisions of its employment standards officers?

Reviews are conducted by an independent, quasi-judicial tribunal, the Ontario Labour Relations Board. The Board's decision about whether the employment standards officer's decision was right or wrong is final.

If employees or employers are dissatisfied with an officer's decision, they may have the right to apply for a review (appeal). They must complete an Application for Review, setting out the facts and reasons for the application.

Employees

An employee who files a claim can appeal:

- an officer's refusal to issue an Order to Pay Wages, an Order to Pay Compensation and/or Reinstate or a Compliance Order.

An employee for whom an order has been issued (whether or not he or she filed a claim) can appeal:

- the amount of an officer's Order to Pay Wages or an officer's Order to Pay Compensation and/or Reinstate.

For employees, the application for review must be submitted within 30 days of the date the letter:

- advising the employee that an order has been issued against the employer, or
- advising that the officer has refused to issue an order has been served on the employee.

Employers

For employers, the application must be submitted within 30 days of the date of *being served* with an order or notice.

Employers can apply for a review of:

- a Compliance Order (these orders don't require payment of wages or compensation)
- a Notice of Contravention (the employer doesn't have to pay the amount of the penalty before the review hearing can proceed)
- an Order to Pay Wages (the employer must pay the full amount of the order plus the administrative fees, to the Director of Employment Standards in trust)
- an Order to Pay Compensation and/or Reinstate (the employer must pay the amount of the order into trust up to a maximum of \$10,000 to the Director of Employment Standards in trust).

How does the *ESA* protect employees who have rights under the act?

Employers are prohibited from penalizing employees *in any way* for:

- asking the employer to comply with the *ESA* and the regulations
- asking questions about rights under the *ESA*
- filing a complaint under the *ESA*
- exercising or trying to exercise a right under the *ESA*
- giving information to an employment standards officer
- taking, planning on taking, being eligible or becoming eligible for an emergency leave, family medical leave, parental or pregnancy leave
- being subject to a garnishment order (i.e., to have a certain amount deducted directly from wages to satisfy a debt)

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- participating in a proceeding under the *ESA*
 - participating in a proceeding under section 4 of the *Retail Business Holidays Act* (regarding tourism exemptions that allow retail businesses to open on holidays)
 - refusing to take a lie detector test
 - refusing Sunday work (for certain retail workers only).

An employer that does penalize an employee for any of these reasons can be ordered by an employment standards officer to:

- reinstate an employee to his or her job
- compensate an employee for any loss incurred because of a violation of the *ESA*
- pay the employee any wages that may be owing.

Can a person be prosecuted for contravening the *ESA*?

An employer or other person may also be prosecuted and ordered to pay a fine and/or imprisoned for contravening the *ESA*. A court may also order the employer to take whatever action is necessary to remedy the violation, including paying wages and compensating and/or reinstating an employee.

It's an offence for an employer or other person to:

- contravene the *ESA* or regulations
- make or keep false records or other documents that must be kept under the *ESA*
- provide false or misleading information under the *ESA*
- fail to comply with an order, direction or other requirement under the *ESA* or regulations.

Offences may be prosecuted, and if there is a conviction the offender may be subject to fines or imprisonment. The Ministry of Labour may choose to prosecute an employer or any other person who is in contravention of the *ESA*. Individuals if convicted of an offence can be fined up to \$50,000, imprisoned for up to 12 months, or both.

A corporation can be fined up to \$100,000 for a first conviction. If the corporation has already been convicted of an offence under the *ESA*, it can be fined up to \$250,000 for a second conviction. For a third or subsequent conviction, the corporation can be fined up to \$500,000.

This Fact Sheet provides general information about the Ministry of Labour's role in administering the *Employment Standards Act, 2000 (ESA)* and its regulations. For complete information please refer to the *ESA* and the regulations.

Need More Information?

If you have questions about the *Employment Standards Act*, call the Ontario Ministry of Labour's Employment Standards Information Centre at 416-326-7160 or 1-800-531-5551, or visit a Ministry of Labour office or Government Information Centre in person.

Here's how you can get written publications about the *Employment Standards Act*:

- Ministry of Labour website: www.gov.on.ca/lab
- Ministry of Labour Publications Sales unit: 1-800-809-4731

ESA Fact Sheets are available on the following subjects:

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| <input type="checkbox"/> Agricultural Workers | <input type="checkbox"/> Minimum Wage |
| <input type="checkbox"/> Domestic Workers | <input type="checkbox"/> Pregnancy Leave & Parental Leave |
| <input type="checkbox"/> Emergency Leave | <input type="checkbox"/> Public Holidays |
| <input type="checkbox"/> Family Medical Leave | <input type="checkbox"/> Retail Workers |
| <input type="checkbox"/> Frequently Asked Questions | <input type="checkbox"/> Role of the Ministry of Labour |
| <input type="checkbox"/> Homeworkers | <input type="checkbox"/> Termination of Employment & Severance Pay |
| <input type="checkbox"/> Hours of Work & Overtime | <input type="checkbox"/> Vacation |
| <input type="checkbox"/> How Are You Covered by the ESA? | <input type="checkbox"/> What Young Workers Should Know |
| <input type="checkbox"/> How to File a Claim | |

This Fact Sheet is provided for your information and convenience only. It is not a legal document. For further information and the exact wording in the ESA, please refer to the Employment Standards Act, 2000 (ESA) and regulations.

Please call the Employment Standards Information Centre in the greater Toronto area at 416-326-7160, or toll-free outside Toronto at 1-800-531-5551.

Information on the ESA can also be found at the *Employment Standards Act* section of the Ministry of Labour's website: www.gov.on.ca/lab. You can order copies of the ESA and related information materials from:

- the Ministry of Labour's Publication Sales Unit at 1-800-809-4731;
- the Ontario government E-Laws website at www.e-laws.gov.on.ca or,
- Publications Ontario, 1-800-668-9938; hearing impaired TTY 1-800-268-7095.

